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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92067794
Party	Defendant The Burton Corporation
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

JOSHUA S. SCHOONOVER,

Petitioner,

-against-

THE BURTON CORPORATION,

Registrant.

Cancellation No. 92067794
(parent)

Cancellation No. 92069499

**CERTIFIED
TRANSCRIPT**

ZOOM CROSS-EXAMINATION OF TOBY F. BOST

(All parties appearing remotely)

MONDAY, NOVEMBER 9, 2020

REPORTED BY: NICOLE GALVIN, CSR NO. 13826

JOB NO.: 403704

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2 TRADEMARK TRIAL AND APPEAL BOARD

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8 Registrant.
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14
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16 ZOOM CROSS-EXAMINATION OF TOBY F. BOST, taken
17 on behalf of Registrant. All parties appearing
18 remotely, beginning at 10:03 a.m., and ending at
19 12:39 p.m., on Monday, November 9, 2020, before
20 Nicole Galvin, Certified Shorthand Reporter, No.
21 13826.
22
23
24
25

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I N D E X

WITNESS: Toby F. Bost

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Reporter appearing remotely from San Diego,
California
NOVEMBER 9, 2020;

THE REPORTER: Good morning. My name is Nicole
Galvin. I'm a CSR with Advanced One Legal. I'll be
swearing in the witness from a remote location.

Would counsel please state their appearances,
beginning with the noticing attorney.

MR. O'BRIEN: Good morning from the East Coast.
This is Evan O'Brien on behalf of the Registrant, The
Burton Corporation.

MR. SCHOONOVER: Good morning. Joshua Schoonover,
pro se.

TOBY F. BOST,
having first been duly sworn, was
examined and testified as follows:

MR. O'BRIEN: Josh, now that we're on the record,
why don't we stipulate further to our conversation off
the record that objections except as to form and motions
to strike will be reserved until briefing. Is that
acceptable, Josh?

MR. SCHOONOVER: Yes. Thank you.

1 MR. O'BRIEN: Okay, thank you.

2 EXAMINATION

3 BY MR. O'BRIEN:

4 Q All right, Mr. Bost, sorry. Does Bost rhyme
5 with most, or am I mispronouncing it?

6 A No, it's Bost. You got it.

7 Q Okay, thank you. Mr. Bost, have you ever
8 given testimony in any legal proceeding before?

9 A Yes.

10 Q When was that?

11 A At various times throughout my professional
12 career. Last I recall was in roughly 2016.

13 Q What was that event?

14 A Just related to a business that I was -- a
15 consumer business that I was running, you know, one of
16 the various positions that I've held. We had a legal
17 proceeding with an ex-employee.

18 Q Did you give a deposition?

19 A Yes.

20 Q How many depositions have you given?

21 A Throughout my career, tough to recall but
22 probably four. Three, four, something like that.

23 Q Have you ever testified in any other legal
24 proceeding under oath besides a deposition?

25 A No.

1 Q Very briefly, let me just kind of repeat the
2 ground rules. Then, we can sort of get to the heart of
3 the matter. It's very important that you give not only
4 audible answers but verbal answers so that the court
5 reporter can take an accurate transcription. Will you
6 do that, please?

7 A Yes.

8 Q By the same token, just to assist the court
9 reporter in doing her job, it's also very important that
10 you please wait for me to finish my question before you
11 respond. By the same token, I will do my best to wait
12 for you to finish your response before I move onto the
13 next question, okay?

14 A Understand.

15 Q If you don't understand the question that I'm
16 asking you, please, let me know and I'll try to ask you
17 a better question, okay?

18 A I will.

19 Q But if you don't let me know that you don't
20 understand it and you answer, the record is going to
21 reflect that you basically understood the question. Do
22 you understand that?

23 A I understand.

24 Q All right. You also understand you're under
25 oath?

1 A Understand, yes.

2 **Q Is there any reason that you can't give**
3 **accurate and truthful testimony today?**

4 A No.

5 MR. O'BRIEN: Mr. Bost, let me share with you
6 through the chat function here on Zoom what I will ask
7 Nicole to mark as Exhibit 1.

8 (Exhibit 1 was marked for identification.)

9 MR. SCHOONOVER: If you can give us a moment to
10 print it out.

11 MR. O'BRIEN: Let me know, please, when you have
12 that printed out.

13 MR. SCHOONOVER: Sure.

14 BY MR. O'BRIEN:

15 **Q Mr. Bost, do you have what I will ask Nicole**
16 **to mark as Exhibit 1 in front of you?**

17 A Yup, I have it.

18 **Q You do?**

19 A Yes.

20 **Q Do you recognize this?**

21 A Yes.

22 **Q This is your trial declaration in the current**
23 **proceeding; is that correct?**

24 A Yes, that's correct.

25 **Q Could you turn to page three. Let me know**

1 **when you're there.**

2 A I'm on page three.

3 Q **Is that your signature, Mr. Bost?**

4 A Yes. That is my signature.

5 Q **You physically signed that original version by**
6 **hand?**

7 A Yes.

8 Q **What date did you do that on?**

9 A From what I recall and what I wrote here,
10 7/24/2019.

11 Q **Just for the record, in standard months, day,**
12 **what is that?**

13 A July 24, 2019.

14 Q **Mr. Bost, fair to say, you have not changed or**
15 **modified this declaration at any time since July 24,**
16 **2019?**

17 A No, I have not.

18 Q **Is it fair to say that this declaration**
19 **contains a full and complete statement of your testimony**
20 **and opinions in this case?**

21 A Yes. That's correct.

22 Q **You haven't reviewed any additional documents**
23 **or materials in connection with this proceeding since**
24 **July 24, 2019; is that fair?**

25 A Yes. That's fair.

1 Q Mr. Bost, there are three exhibits, A through
2 C, appended to your declaration; is that right?

3 A Yes. That's correct.

4 Q Exhibit A is your CV?

5 A My resume, yes, correct.

6 Q Exhibits B and C are reflected -- or pardon
7 me, referenced in your declaration; is that right?

8 A That's correct.

9 Q To be clear, Exhibits B and C -- putting aside
10 your resume for the moment, Exhibits B and C are the
11 only documents that you've relied upon in forming your
12 opinions in this proceeding; is that correct?

13 A That's correct, yes.

14 Q So you haven't reviewed any other materials to
15 form your opinions in this case, besides Exhibits B and
16 C, right?

17 A That's correct.

18 Q You do not know the amount of money, if any,
19 of Burton sales of goods under the Forum mark since
20 2012, right?

21 A That's correct.

22 Q So you don't know the amount, if any, of
23 Burton's marketing spend in connection with goods sold
24 under the Forum mark since 2012; is that right?

25 A That's correct.

1 Q You also don't know the amount of
2 manufacturing, if any, of goods sold under the Forum
3 mark since 2012?

4 A I don't have any idea.

5 Q You don't know either way whether Burton has
6 ever planned or currently plans to license any mark at
7 issue in this proceeding; is that fair?

8 A That's fair. I have no knowledge.

9 Q You also don't have any knowledge about any
10 plans Burton ever had or may have to sell any mark --
11 the rights to any mark, that is, that's at issue in this
12 proceeding?

13 A Yeah, that's correct. I have no insight
14 there.

15 Q You haven't reviewed Mr. Schoonover's petition
16 for cancellation in this proceeding; is that right?

17 A That's correct.

18 Q Nor have you reviewed Burton's answer?

19 A No. I have not reviewed it.

20 Q Aside from your trial declaration, have you
21 reviewed any other legal filings from this proceeding?

22 A No, I have not.

23 Q When is the last time that you reviewed this
24 declaration?

25 A Last time would be probably when I walked into

1 this office this morning.

2 Q Prior to this morning, when was the last time?

3 A Probably when I created it back in July of
4 2019.

5 Q You created the declaration that I will ask
6 Nicole to mark as Exhibit 1; is that right?

7 A Yup.

8 Q Did you author it?

9 A No. I did not author it.

10 Q Who authored it?

11 A Josh.

12 Q Who is Josh?

13 A Josh Schoonover, he's an attorney.

14 Q Is Mr. Schoonover your attorney?

15 A No.

16 Q Mr. Schoonover authored the declaration, and
17 you signed it?

18 A Yes. That's correct.

19 Q You didn't author any part of it; is that
20 right?

21 A That's correct.

22 Q Aside from Mr. Schoonover, whom have you
23 spoken with regarding this proceeding?

24 A I haven't spoken with anybody else besides
25 Josh.

1 Q Did you ever ask to review any additional
2 materials, aside from Exhibits B and C to your
3 declaration?

4 A No, I did not.

5 Q You don't believe it would have been important
6 to examine any additional discovery material that is
7 documents that may have been produced by either party
8 during discovery?

9 A I don't believe that's important.

10 Q But you don't know what was produced in
11 discovery, do you?

12 A No, I don't.

13 Q Does that mean that you would not have changed
14 your opinions at all, regardless of what may have been
15 produced in discovery?

16 A I was asked a specific opinion on, you know,
17 some press releases that were done. That's really the,
18 you know, gist of it in total.

19 Q Is the answer, no, it wouldn't have mattered
20 to you at all what else may have been produced in
21 discovery? It wouldn't have changed your opinions?

22 A No.

23 Q Just for the record, no, it would not have
24 changed your opinions?

25 A No, not based on the press releases that I was

1 asked to give an opinion on.

2 **Q Before you signed the declaration, did you**
3 **review it?**

4 A Yes.

5 **Q Did you make any edits or comments to the**
6 **version that was prepared solely by Mr. Schoonover?**

7 A Yes.

8 **Q In what respect?**

9 A I don't recall specifically what they were,
10 but, you know, I think my definition of what -- you
11 know, what the press releases were trying to say, like
12 exit out of or transition out of a brand. I was asked
13 to give my opinion in my words what that would mean
14 specific to my experience in the industry.

15 **Q Can we look at your CV, please, which is**
16 **Exhibit A to your trial declaration. Can you let me**
17 **know when you're on the first page of that.**

18 A Okay. I have it in front of me.

19 **Q Mr. Bost, your CV is three pages long; is that**
20 **right?**

21 A Yup. This is one of my various resumes that
22 I've created in the past.

23 **Q How many other resumes have you created in the**
24 **past?**

25 A Probably just the standard updates. I'm no

1 longer with DJO Global. That's an update that would
2 have happened in probably January of 2020. You can
3 reference that probably on LinkedIn.

4 **Q Is this a CV that you've shared with other**
5 **people outside of this litigation?**

6 A Yeah. This was in, really, social media for a
7 number of years as it's updated. A lot of this would,
8 you know, be discoverable on LinkedIn.

9 **Q Why is the contact redacted on page one?**

10 A I think that might just be a function of how
11 it printed.

12 **Q Do you know what's underneath the word**
13 **contact, if anything?**

14 A No, I don't.

15 **Q Mr. Bost, it's fair to say, this CV is current**
16 **as of July 2019, as opposed to today, right?**

17 A Yes.

18 **Q Aside from the fact that you're no longer with**
19 **DJO Global, what else would you add to this CV as of**
20 **today?**

21 A On LinkedIn, currently, it includes the
22 business that I started earlier in the year,
23 January 2020.

24 **Q Anything else?**

25 A Not that I recall. I believe that's all it

1 says.

2 **Q What is the business that you began in**
3 **January 2020?**

4 A It's called Belvedere Capital Fund.

5 **Q What is Belvedere Capital Fund?**

6 A It's a start-up private equity company.

7 **Q Generally, what is it dedicated towards**
8 **accomplishing?**

9 A It's dedicated to raising capital to acquire
10 consumer-based businesses.

11 **Q Is that an LLC?**

12 A Yes.

13 **Q Are you a member of the LLC?**

14 A Sole member, yes.

15 **Q No other members?**

16 A No.

17 **Q Any employees?**

18 A No.

19 **Q Has Belvedere Capital invested in any**
20 **consumer-based companies?**

21 A Not currently.

22 **Q Would the outcome of this proceeding in any**
23 **way impact the business of Belvedere Capital Fund?**

24 A No.

25 **Q Why not?**

1 A Completely unrelated to projects that I'm
2 working on currently.

3 Q Do you or Belvedere Capital have any plans to
4 use or seek to use any of the marks that are at issue in
5 this proceeding in the event that they are canceled?

6 A No.

7 Q When were you first retained to act as an
8 expert in this proceeding, Mr. Bost?

9 A I don't recall the exact date.

10 Q When approximately?

11 A It would have been somewhere close to
12 July 2019.

13 Q Sitting here today, your best recollection is
14 that you were retained to be an expert in the same month
15 that you signed the declaration that you're looking at
16 right now?

17 A Yes. That's correct.

18 Q How many hours of your time have you devoted
19 to this engagement?

20 A Not many. I would estimate probably two to
21 three hours max, including this meeting.

22 Q You've never acted as an expert in a legal
23 proceeding before; is that correct?

24 A That's correct.

25 Q This is the first time?

1 A Yes.

2 Q Since you were retained to act as an expert in
3 this proceeding, have you been approached by anyone else
4 to act as an expert in some other legal proceeding?

5 A No, I have not.

6 Q Since you were retained to act as an expert in
7 this proceeding, have you sought out opportunities to
8 act as a legal expert in some other proceeding?

9 A No, I have not.

10 Q Is it fair to say, your CV does not indicate
11 that you currently act or have ever acted as an expert
12 in a legal proceeding?

13 A That's correct.

14 Q Am I correct that your CV does not reflect any
15 publications of any kind that you authored?

16 A That's correct.

17 Q It also does not indicate that you've ever
18 taught any educational program of any kind; is that
19 correct?

20 A That's correct.

21 Q Your bachelor's degree is in business
22 administration, correct?

23 A Correct.

24 Q Any other fields or minors, minor fields?

25 A Communications would be the minor.

1 **Q Have you pursued or completed any other higher**
2 **education following your bachelor's degree?**

3 A No.

4 **Q Your bachelor's degree you obtained in 1993;**
5 **is that right?**

6 A That's correct.

7 **Q Mr. Bost, what did you do between 1993 and**
8 **January 1996?**

9 A I worked for a small surfboard company called
10 Boom Doggers, which is where I started off my career in
11 action sports.

12 **Q Can you spell that entity for the benefit of**
13 **Nicole.**

14 A Yeah. It's B-O-O-M, D-O-G-G-E-R-S.

15 **Q Where did you -- strike that. Did you work**
16 **for Boom Doggers throughout the entire period following**
17 **your graduation from college through January 1996?**

18 A That's correct.

19 **Q Where did you work for Boom Doggers, where**
20 **physically?**

21 A Clairemont Mesa, just outside of San Diego. I
22 don't recall the address.

23 **Q Why is that not on your CV?**

24 A I don't have a reason for it not being there.
25 I think it was just so long ago that, you know, I didn't

1 put it on there.

2 Q Generally, what were your job responsibilities
3 while you worked for Boom Doggers?

4 A I was basically a production and office
5 manager.

6 Q What business was Boom Doggers in, generally?

7 A It was an apparel-based business. T-shirts,
8 all kinds of various categories of clothing.

9 Q Does it still exist?

10 A Not to my knowledge.

11 Q What's No Fear?

12 A No Fear was another action sports brand that I
13 worked for early in my career.

14 Q What did you do for No Fear?

15 A I ran all of the manufacturing.

16 Q What did No Fear manufacture?

17 A Apparel and clothing.

18 Q Can you be more specific?

19 A T-shirts, board shorts, outerwear.

20 Q Is this for water-based sports?

21 A It was for really all kinds of action sports
22 from, you know, lifestyle apparel and clothing to
23 motocross to, you know, snow categories as well. So
24 various, you know, categories related to action sports.

25 Q What is Rip Curl?

1 A Rip Curl was a surf brand or is a surf brand.

2 Q What did you do for Rip Curl?

3 A I ran the manufacturing.

4 Q What did it manufacture?

5 A Everything from clothing, T-shirts, board
6 shorts, to wetsuits neoprene, to outerwear which was for
7 snowboarding and skiing.

8 Q From Rip Curl, you went to work for O'Neill in
9 1999; is that right?

10 A That's correct, O'Neill Clothing.

11 Q What was the name of the business?

12 A At the time, it was La Jolla Sport when I
13 joined LLC.

14 Q Was O'Neill a d/b/a name, essentially?

15 A It was a license that La Jolla Sport owned.

16 Q What did you do for La Jolla Sport when you
17 worked there?

18 A I began in manufacturing, VP of manufacturing.
19 That was the beginning of -- when I started there, I
20 joined as VP of manufacturing.

21 Q What other positions did you hold?

22 A As the business grew, I was with the company
23 for 14 years. We built a pretty large portfolio. I
24 went from VP of manufacturing, to VP of operations, to
25 COO, to CEO in that span of 14 years.

1 **Q What's the difference, if any, between the La**
2 **Jolla Group, LLC and O'Neill, as they're both listed on**
3 **your CV?**

4 A When I first joined La Jolla Sport, there was
5 only the O'Neill brand in the portfolio. Through my
6 journey and career, I created La Jolla Group and
7 expanded the portfolio into a multi-branded portfolio.

8 **Q What were the other brands in the portfolio**
9 **that you created?**

10 A Quite a few. There was O'Neill, Lost, Rusty,
11 Metal Mulisha. It's all in my CV, if you need to keep
12 up. FMF, Alien Workshop, Habitat, Reflex, Berrics among
13 others. There was In God's Hands as well that I didn't
14 even list on here.

15 **Q Are you referring to page one, the list of**
16 **brands on page one of your CV?**

17 A Yeah. It states there what the multi-branded
18 portfolio of La Jolla Group consisted of when I was COO
19 and chairman.

20 **Q You left La Jolla Group and O'Neill, I**
21 **suppose, if you consider them two separate entities, in**
22 **November 2013; is that right?**

23 A I don't recall November being the date. I
24 believe it was May of 2013.

25 **Q Could that be a typo on page two of your CV**

1 **then?**

2 A Yes.

3 **Q Why did you leave those organizations in May**
4 **of 2013?**

5 A I left to pursue other ventures.

6 **Q What ventures were those?**

7 A A venture in which I could own equity in a
8 business. At the time, I was CEO of a company. I had
9 been CEO for seven years and was not added to the equity
10 pool. So I left to go out in search of a business that
11 I could participate in the equity pool.

12 **Q Was DJO Global such a business?**

13 A Yeah. It was a Blackstone portfolio company,
14 and, you know, I had the ability to, you know, hold some
15 options that could convert to equity.

16 **Q When did you leave DJO Global?**

17 A We transacted the company in 2019. As of June
18 of 2019, I went into a transition consulting role that
19 lasted from June to the end of 2019 as we transitioned
20 the specific business unit that I was running to the new
21 company into different business units.

22 **Q When you say transacted the company, what do**
23 **you mean by that?**

24 A We were a Blackstone portfolio company. While
25 I was with DJO, we transformed the business. Took it

1 on, you know, a road show and sold the business to a
2 publicly traded company called Colfax.

3 **Q Can you spell that?**

4 A C-O-L-F-A-X.

5 **Q When that occurred, you began a -- did you say**
6 **it was a consulting --**

7 A I went into transition consulting.

8 **Q What is transition consulting?**

9 A In June, I was asked to -- June 2019, I was
10 asked to move to Texas. I declined that offer to move
11 to Texas to take on another role within the company. So
12 when I declined that new role, I agreed to transition
13 the business that I was president of into two different
14 business units in the new company that Colfax was now
15 owning.

16 **Q Have you ever worked for a company within**
17 **which Burton or any of Burton's brands was within that**
18 **company's portfolio?**

19 A No, I have not.

20 **Q Have you ever worked in any way, in any**
21 **capacity with Burton?**

22 A Not that I recall, no.

23 **Q Would any of the companies that you've worked**
24 **for be considered a competitor of Burton?**

25 A Not directly but we definitely had categories

1 that, you know, crossed over into competitive lanes,
2 like outerwear and apparel for snowboarding and skiing.

3 **Q Can you give me some examples of those**
4 **competitive lanes?**

5 A Well, with No Fear, I oversaw the
6 manufacturing of the outerwear program. While at Rip
7 Curl, I oversaw the manufacturing of the outerwear
8 program. While at O'Neill, I oversaw the marketing,
9 ultimately, as CEO for all of the categories and oversaw
10 the e-commerce business that sold not only all the
11 apparel and wet suits but also snow and outerwear.

12 I not only oversaw the e-commerce, I also
13 oversaw ultimately the expansion of a retail
14 brick-and-mortar business that we built.

15 **Q Aside from Belvedere Capital Fund, do you**
16 **currently own or advise any other company in, what you**
17 **refer to as, the action sports base?**

18 A No.

19 **Q How do you know Mr. Schoonover?**

20 A I don't recall exactly when we first met, but,
21 you know, having, you know, been in the action sports
22 industry, we met actually over LinkedIn at some point a
23 number of years ago and have stayed, you know, in
24 contact.

25 **Q Has he ever worked for you?**

1 A No.

2 Q Has he ever been your lawyer?

3 A Yeah. Actually, we've worked on -- he helped
4 me with a project for a line of skin care products that
5 I wanted to launch, I think, over the last few years.

6 Q What line of products is that?

7 A It was called Sailor Sunblock.

8 Q Was this something that you did personally, or
9 did you do this on behalf of DJO Global?

10 A No. It was something that I came up with a
11 concept for and, you know, tried to work on personally.

12 Q Mr. Schoonover was your personal lawyer in
13 connection with that skin care product's efforts that
14 you were trying to launch?

15 A He was specifically related to the patent work
16 that I wanted to have done to see if I could get IP for
17 a product that I was building.

18 Q You were Mr. Schoonover's client; is that fair
19 to say?

20 A I was as it pertained to that particular
21 product, yeah.

22 Q This is a yes-or-no question. Did you
23 compensate Mr. Schoonover for that work that he did?

24 A Yes.

25 Q When approximately did this work occur?

1 A I want to say, somewhere around 2018.

2 Q Can you be more specific?

3 A I don't recall the exact date.

4 Q What was the name of the product that you were
5 seeking to register?

6 A The brand was Sailor Sunblock. The specific
7 product that I was trying to secure IT for was called
8 Sailor's Lip.

9 Q Did you secure IP for Sailor's Lip?

10 A No, I did not.

11 Q Why not?

12 A After, you know, trying to develop the
13 product, it was very difficult in nature to build and,
14 you know, it just wasn't something that was going to be
15 possible in terms of the chemistry.

16 Q Did Mr. Schoonover ask you to testify as an
17 expert in this proceeding?

18 A Yes.

19 Q Do you have any understanding of why
20 Mr. Schoonover is a petitioner in this proceeding?

21 A No.

22 Q Why did you say yes to that request by
23 Mr. Schoonover?

24 A I don't recall the specifics as to why I said
25 yes.

1 Q Do you recall anything about why you said yes?

2 A I'm not sure I understand that question.

3 Q Well, you said you don't recall the specifics.

4 Do you recall anything about why you said yes?

5 A He asked me for my opinion. I felt like it
6 was my civic duty to give him my opinion.

7 Q You're doing him a favor; is that right?

8 A I guess, yeah, a favor. That works.

9 Q You believe that it's your civic duty to
10 provide a legal opinion; is that right?

11 A No. That's not right. It's not legal.

12 Q Then, you believe it's your civic duty to
13 offer your personal opinion?

14 A No. I call it my business opinion.

15 Q You've never offered a business opinion to any
16 other person in any other legal proceeding besides this
17 one; is that correct?

18 A No, I have not.

19 Q Mr. Bost, have you received any compensation
20 for your engagement in this proceeding as an expert?

21 A No, I have not.

22 Q Do you have any expectancy of any compensation
23 in the future?

24 A No, I don't.

25 Q You are volunteering your opinions without any

1 **compensation or expectancy of compensation; is that**
2 **right?**

3 A Yes. That's correct.

4 **Q This is an act of charity on your part?**

5 A Yeah. Charity works.

6 **Q What other volunteer activities do you engage**
7 **in outside of your professional paid work?**

8 A No specific charity work, you know, with any
9 foundation or 501(c)(3) or anything like that. I'd say
10 my charity work is specific to all the business advice
11 that I've given to many different people throughout the
12 course of my career.

13 **Q Was it your decision not to accept**
14 **compensation?**

15 A I was never offered compensation. The topic
16 never was brought up.

17 **Q Did you ever request compensation?**

18 A No, I did not.

19 **Q Isn't your time valuable?**

20 A Yes, absolutely.

21 **Q You simply made a decision in this instance to**
22 **provide a pro bono business opinion in a pending legal**
23 **proceeding?**

24 A The answer to that is, yes.

25 MR. O'BRIEN: All right, Mr. Bost, you need to take

1 a phone call; is that right?

2 THE WITNESS: That's correct, at 11:00.

3 MR. O'BRIEN: You can be back on at 11:30; is that
4 fair?

5 THE WITNESS: Yeah. I don't think the call will
6 take more than 15 minutes, actually, but 11:30 at the
7 latest.

8 MR. O'BRIEN: Okay. Why don't we go off the
9 record, and you can go ahead and do what you need to do.
10 We can plan to turn our cameras back on around maybe
11 11:15.

12 THE WITNESS: Yeah, we'll shoot for that.

13 (Recess was taken.)

14 MR. O'BRIEN: Back on the record.

15 BY MR. O'BRIEN:

16 Q Mr. Bost, could you please go back and look at
17 your trial declaration, which I will ask Nicole to mark
18 as Exhibit 1.

19 A Yes.

20 Q Mr. Bost, in paragraph nine, I want to direct
21 your attention to your testimony. Can you read
22 paragraph nine, please.

23 A Read it out loud?

24 Q Yes, please.

25 A I've been asked by Petitioner, Joshua S.

1 Schoonover, to clarify the meaning of the phrase
2 transition out of, transitioning out of, exit out of, or
3 exiting out of as it is used in the action sports
4 apparel and hard goods business.

5 I've also been asked to lend my opinion as to
6 the extent of The Burton Corporation related to the act
7 of exiting of the Program Brands, namely the Forum
8 brand.

9 **Q Mr. Bost, could you have possibly misread the**
10 **second sentence there? I think you said extent.**

11 A Intent.

12 **Q Can you just, for the record, reread the**
13 **second sentence.**

14 A I've also been asked to lend my opinion as to
15 the intent of The Burton Corporation related to the act
16 of exiting out of the Program Brands, namely the Forum
17 brand.

18 **Q Mr. Bost, is it fair to say that paragraph**
19 **nine reflects the assignment that you assumed in acting**
20 **as an expert in this case?**

21 A Yes.

22 **Q You offer two opinions; is that a fair**
23 **characterization?**

24 A Yes.

25 **Q Directing your attention to paragraph number**

1 **10, Mr. Bost, does paragraph number 10 state the first**
2 **of those two opinions?**

3 A Yes. It's transition out of and exit out of.

4 **Q Can you read the first sentence of paragraph**
5 **10 for the record, please?**

6 A First, the phrases transition out of,
7 transitioning out of, exit out of, or exiting out of,
8 with respect to a brand is a phrase that is often used
9 in the action sports apparel and hard goods business,
10 and to transition out or exit out means, with respect to
11 the brand, to stop making, selling and/or offering for
12 sale goods which bear the mark associated with the
13 respective brand.

14 **Q That's fine, thank you. Mr. Bost, it's your**
15 **opinion that these phrases have a separate and distinct**
16 **meaning in your field of work than they bear in any**
17 **other field of work; is that fair?**

18 A Yes.

19 **Q You don't provide any citation for that**
20 **proposition, though; is that also fair?**

21 A No citation.

22 **Q Is that just based on your personal experience**
23 **in the action sports apparel and hard goods businesses?**

24 A Yes.

25 **Q You don't cite any other examples in paragraph**

1 10 or anywhere else in your declaration of those phrases
2 being used by anyone in the action sports apparel and
3 hard goods businesses, right?

4 A That's correct.

5 Q You don't believe that a layperson is capable
6 of understanding the phrases exit out of and transition
7 out of?

8 A A layperson, I'm not sure.

9 Q Well, do you know what I mean when I use the
10 phrase layperson?

11 A I mean, that definition could be different to
12 anybody you ask. So, I guess, the answer to that is no.

13 Q Well, you consider yourself an expert, right?

14 A In action sports, yes.

15 Q You don't believe that someone who is not an
16 expert in action sports can understand the phrases exit
17 out of or transition out of?

18 A It's hard for me to answer that. I don't
19 know.

20 Q You think it's possible that laypeople are
21 perfectly capable of understanding the meaning of those
22 phrases, right?

23 A It's possible.

24 Q Mr. Bost, you say that the phrases transition
25 out of or exit out of are "often used". Is that right?

1 A Yes.

2 Q Despite the fact that they're often used, you
3 didn't provide any examples of other instances in which
4 those phrases were used?

5 A No. I didn't cite any examples.

6 Q Can you read the second sentence, please, in
7 paragraph 10.

8 A With respect to a business, it would mean to
9 cease activities of a business as a whole in the instant
10 matter the phrase transition out of or exit out of is
11 used in connection with the Program Brands, including
12 Forum.

13 Q Mr. Bost, you didn't write those sentences,
14 right?

15 A No, not in the declaration.

16 Q You didn't write the first sentence in
17 paragraph 10 either, right?

18 A No. Not word for word, no.

19 Q You don't provide any citation to any sort of
20 authority or any external source for the opinions that
21 are reflected in the second and third sentences of
22 paragraph 10, correct?

23 A Correct.

24 Q Those opinions are also based solely on your
25 personal experience in the action sports apparel and

1 **hard goods business; is that right?**

2 A That's correct.

3 **Q Am I correct that you didn't consult any**
4 **external sources to support those opinions?**

5 A Correct.

6 **Q What are the Program Brands?**

7 A A group of brands that Burton refers to as the
8 Program Brands.

9 **Q Do you know what those are?**

10 A Yeah, I do.

11 **Q What are they?**

12 A Forum, Special Blend, and Foursquare.

13 **Q Do you know which of those marks, if any, are**
14 **at issue in this proceeding?**

15 A The Forum brand.

16 **Q Any of the others?**

17 A No.

18 **Q How do you know that?**

19 A I know that because I prepared with Josh this
20 declaration specifically about the Forum brand. I was
21 not asked about any other brands in the Program Brand
22 group.

23 **Q You don't know if any other marks are at**
24 **issue, aside from the one that you were asked to offer**
25 **an opinion on?**

1 A That's correct.

2 Q You don't know if Burton has, in fact, ceased
3 activities as a whole, business activities as a whole,
4 right?

5 A I don't know.

6 Q You also don't know whether with respect to
7 any particular brand Burton has stopped making, selling
8 and/or offering for sale any goods which bear the mark
9 of a Program Brand; is that right?

10 A I don't know. That's correct.

11 Q Can you turn to Exhibit B, please, of your
12 declaration.

13 A Did you say B as in boy?

14 Q Yes, sir.

15 A Okay.

16 Q What is Exhibit B?

17 A This is a press release from Burton.

18 Q When did you first see this press release?

19 A I would have seen it when it was announced on
20 October 23, 2012.

21 Q Did you see it when it was announced on
22 October 23, 2012?

23 A Yes. Being on the pulse in the industry, I
24 saw it.

25 Q Can you identify, Mr. Bost, where in the press

1 **release the phrase transition out of or transitioning**
2 **out of is used?**

3 A First sentence of paragraph three.

4 **Q Could you identify in the press release where**
5 **the phrase exit out of or exiting out of is used?**

6 A Same paragraph number three, last sentence.
7 It's also referred in key facts of the Program Brands
8 towards the end of the release.

9 **Q On what page is that?**

10 A On page four, key facts.

11 **Q Did you ever speak with anybody at Burton**
12 **about this press release?**

13 A No.

14 **Q Directing your attention back to your trial**
15 **declaration, Mr. Bost, can you please read paragraph 11.**

16 A Thereafter, it is my opinion that when The
17 Burton Corporation made a public statement, Exhibits B
18 and C respectively, manifesting intent to exit out of
19 the Program Brands, namely Forum, it was received by
20 myself, and likely most or all of the field, that Burton
21 was going to stop manufacturing and selling goods
22 bearing these marks, specifically the Forum mark.

23 **Q Mr. Bost, do you believe that you know what**
24 **Burton's intent was at the time --**

25 A Yes.

1 Q I'm sorry. Let me ask the question. You
2 believe that you know what Burton's intent was at the
3 time of October 23, 2012?

4 A Yes. That's correct.

5 Q That's based on your review of the press
6 release?

7 A Yes. That's correct.

8 Q It's your personal belief that Burton
9 manifested an intent to stop manufacturing and selling
10 goods bearing the marks of the Program Brands?

11 A Yes.

12 Q You speak solely for yourself, is that right,
13 not for anyone else or any other company?

14 A Yes. That's correct.

15 Q You don't know whether all or most in the
16 field share the same personal belief that you have held
17 about this press release; is that right?

18 A Yeah. I, personally, don't know.

19 Q You don't know what anybody else personally
20 believes about the press release, right?

21 A Yes. That's correct.

22 Q You didn't make any effort to investigate the
23 reception or reaction by anybody else to this press
24 release, right?

25 A That's correct.

1 **Q Can you please read the first sentence of**
2 **paragraph number 12 of your declaration, Mr. Bost.**

3 A Jake Burton expressly confirmed the intent to
4 put Forum to bed in the Transworld Business interview,
5 Exhibit C, but suggested The Burton Corporation seek to
6 maintain the trademarks.

7 **Q Thank you. Mr. Bost, what does maintain the**
8 **trademarks mean?**

9 A My opinion would be that they were going to
10 try to keep them.

11 **Q Is that a legal opinion?**

12 A No. I'm not a lawyer.

13 **Q What does keep them mean?**

14 A Keep them in their IP portfolio.

15 **Q Yes. What does that mean?**

16 A That's what I mean. They would try to keep
17 them in their IP portfolio.

18 **Q What is an IP portfolio?**

19 A Intellectual property, like trademarks that
20 companies maintain.

21 **Q I've asked you what maintain the trademarks**
22 **means. Now, it means keep them in a portfolio of**
23 **trademarks that companies maintain?**

24 A In my experience, that's what we did at La
25 Jolla Group.

1 **Q What do you mean by that?**

2 A We would keep our trademarks and maintain them
3 in an IP portfolio. That's what we refer to it as.

4 **Q As opposed to doing what?**

5 A As opposed to doing what? I don't understand
6 the question.

7 **Q You don't understand what as opposed to doing**
8 **what means?**

9 A I mean, you could ask a company what they do
10 with their trademarks.

11 **Q I'm asking you what alternatives is there to**
12 **"maintaining the trademarks"?**

13 A Actively use them, sell them, sell the goods
14 that bear them.

15 **Q But you don't know whether Burton did any of**
16 **those things, right?**

17 A I don't, no.

18 **Q You don't know whether it intended to do any**
19 **of those things or intends to do so now, right?**

20 A I do not, no.

21 **Q Can you read the second sentence of paragraph**
22 **12, please.**

23 A It appears from the documentary evidence, and
24 is certainly my opinion, that The Burton Corporation's
25 intent was to stop making and selling goods bearing the

1 Forum mark, among other marks identified, but to
2 preserve the trademark registrations in absence of
3 actual commercial use.

4 Q Mr. Bost, you didn't write that sentence,
5 right?

6 A No. I did not write. I discussed. Josh
7 wrote.

8 Q You spoke out loud, and Josh wrote it in some
9 manner; is that what happened?

10 A Yes. We discussed it in detail.

11 Q Mr. Bost, you refer to documentary evidence,
12 right?

13 A Yes.

14 Q You haven't reviewed any documentary evidence
15 other than Exhibits B and C; isn't that right?

16 A That's correct.

17 Q When you say it appears from documentary
18 evidence, you're simply saying, based on my review of
19 the press release itself, Exhibit B and of a secondary
20 source, Exhibit C, that it's your opinion, right?

21 A That's correct.

22 Q You also don't know what Burton's intent was
23 in terms of whether it would stop making and selling
24 goods bearing the Forum mark, right?

25 A That's correct. I was not -- I did not know.

1 **Q Aside from Sailor's Lip, has Mr. Schoonover**
2 **performed any legal services for you?**

3 A No.

4 **Q Do you know Adam Shomer?**

5 A No.

6 **Q Have you ever heard of a company called**
7 **Reeflection, LLC, R-E-E-F-L-E-C-T-I-O-N?**

8 A No.

9 **Q Can you read the first sentence of paragraph**
10 **13, please, of your declaration.**

11 A I have not been retained, paid, or compensated
12 in exchange for providing this declaration and opinion
13 testimony.

14 **Q You have been retained, though, right?**

15 A No.

16 **Q You don't believe you are a retained expert in**
17 **this case?**

18 A No.

19 **Q Can you read the second sentence of paragraph**
20 **13, please.**

21 A I am volunteering these statements and
22 opinions in an effort to assist the Trademark Trial and
23 Appeal Board (TTAB) with clarification of the meaning of
24 a term of art in a specific field, which I understand to
25 be disputed by the parties, and to lend my opinion

1 concerning intent of The Burton Corporation as it
2 relates to subject matter manifested in published
3 releases and interviews, which intent is speculated but
4 may be best appreciated under the circumstances by those
5 with relevant experience in the particular field, and
6 therefore my opinion may be helpful to the TTAB to
7 redress a disputed issue, namely, intent which goes to
8 the issue of abandonment.

9 **Q Mr. Bost, you didn't write that sentence,**
10 **right?**

11 A That's correct. We discussed. Josh wrote.

12 **Q What is the issue of abandonment?**

13 A I don't understand the question.

14 **Q The last three words of the second sentence of**
15 **paragraph 13 are issue of abandonment. What is the**
16 **issue of abandonment?**

17 A I guess, the issue would be, did Burton
18 abandon the Forum trademark.

19 **Q Do you have any idea what that means?**

20 A I mean, yeah, abandon means to no longer sell,
21 distribute, or commercialize a brand.

22 **Q That's the definition of abandonment you used**
23 **in connection with your declaration?**

24 A Yes.

25 **Q You're not a lawyer, though, right?**

1 A No. I'm not a lawyer.

2 Q Besides this proceeding, have you ever
3 volunteered statements and opinions to any other agency
4 or governmental authority or court?

5 A No.

6 Q You just decided to do that for this case and
7 this case only?

8 A Yes. That's correct.

9 Q Why are you doing Mr. Schoonover that favor?

10 A I was asked to do it, and I have experience in
11 the field. So I, of course, could cast an opinion on
12 it.

13 Q You could have said no, though, right?

14 A Yes.

15 Q You have no plans to provide legal testimony
16 in any other proceedings, though; is that right?

17 A That's correct.

18 Q Mr. Bost, how much work did you do on this
19 matter prior to July of 2019?

20 A Not much.

21 Q What did that consist of?

22 A A few conversations.

23 Q What was the substance of those conversations?

24 A If I had an opinion.

25 Q Did you agree to provide testimony?

1 A Yes.

2 Q When did that occur?

3 A Timeline, right around July, maybe a few weeks
4 prior.

5 Q It could have been in the month of June?

6 A Yes.

7 Q Of what year?

8 A 2019.

9 Q You didn't talk to Mr. Schoonover about this
10 proceeding before June or July of 2019?

11 A No, I did not.

12 MR. O'BRIEN: Mr. Bost, I'm sharing with you what
13 I'm going to ask Nicole to mark as Exhibit Number 2.
14 Let me know when you see that, please.

15 (Exhibit 2 was marked for identification.)

16 THE WITNESS: Okay.

17 BY MR. O'BRIEN:

18 Q Do you have it in front of you?

19 A Yes.

20 Q Have you seen this before?

21 A Yes.

22 Q Can you turn to page two, please. Are you
23 there?

24 A Yes.

25 Q Do you see this is dated April 19, 2019?

1 A No.

2 Q It's not dated April 19, 2019?

3 MR. SCHOONOVER: Let me print out what you've got.
4 We've got his expert report. I was assuming it's the
5 same one you're trying to present here. Let me print
6 out your actual document so that he can take a look.
7 Bear with us a few moments while it prints.

8 (Pause in proceeding.)

9 BY MR. O'BRIEN:

10 Q Mr. Bost, the question was, on page two, do
11 you agree with me this is dated -- first of all, let me
12 take a half a step back. Strike that. Mr. Bost, do you
13 recognize Exhibit 2?

14 A No.

15 Q Can you turn to page two. Do you agree with
16 me that it's dated April 19, 2019?

17 A That is what the date says, yes.

18 Q Turning back to page one, can you read me the
19 first sentence underneath the -- first of all, can you
20 read me the header in the middle of the page that's in
21 bold, all caps and underlined.

22 A It begins with petitioner?

23 Q Yes, sir.

24 A Petitioner Joshua S. Schoonover's notice of
25 expert and expert disclosure.

1 **Q Can you read what appears just beneath that.**

2 A In accordance with Fed.R.Civ.P.26(a)(2),
3 Petitioner Joshua S. Schoonover hereby provides the
4 following expert disclosures: Toby F. Bost (unretained
5 expert.)

6 **Q And then, there's a black box, right?**

7 A Yeah.

8 **Q You've never seen that before?**

9 A No.

10 **Q Can you read what appears beneath the black**
11 **box next to an asterisk.**

12 A Attorney eyes only, please do not disseminate
13 the expert's address and phone number.

14 **Q Did you ask Mr. Schoonover not to disseminate**
15 **your address and phone number?**

16 A Yes.

17 **Q In April of 2019?**

18 A I don't recall.

19 **Q Did you know you were being disclosed as an**
20 **expert in April of 2019?**

21 A I don't know.

22 **Q Did you write this document?**

23 A No.

24 **Q Did you know that there was some motions that**
25 **were filed about this particular document and whether**

1 you were required to provide a report in this
2 proceeding?

3 A Yes.

4 Q Mr. Bost, if you look at Exhibit 2, do you see
5 just above the date, there's a reference to an ESPN
6 interview?

7 A Are you talking about bullet two, page one?

8 Q I'm sorry. Page two, there's a reference to
9 an ESPN interview. It's the very last bullet above the
10 date.

11 A I see that bullet, yes.

12 Q Do you have any idea what that ESPN interview
13 is?

14 A No.

15 Q You haven't reviewed any ESPN interview,
16 right?

17 A No.

18 Q Do you have any idea why this document would
19 say that you are expected to testify by declaration that
20 you have reviewed and are familiar with an ESPN
21 interview?

22 A No.

23 Q What is the address and phone number that is
24 redacted on Exhibit Number 2? Is that your home
25 address?

1 A I don't know.

2 Q Why did you want it to be redacted? Whatever
3 the address is, why did you want it to be redacted?

4 A I tend to not share my contact information
5 with most, unless I, you know, know them.

6 Q You believe that you can testify as an expert
7 and not be required to provide an address or a phone
8 number to the parties?

9 A Yes.

10 Q Directing your attention back to what I'll ask
11 Nicole to mark as Exhibit Number 1, your trial
12 declaration, could I ask you to please read the last
13 sentence of paragraph 13.

14 A I have no interest in the outcome of this
15 matter.

16 Q Is that true?

17 A Yes.

18 Q So why are you offering opinions?

19 A Because I had one.

20 Q Are you indifferent to the outcome of the
21 matter?

22 A Yes.

23 Q Are there any circumstances when you would not
24 offer an opinion if asked in connection with a legal
25 proceeding?

1 A Yes. I can't think of one specifically but...

2 Q Did you need the permission of DJO Global to
3 take on this engagement?

4 A No.

5 Q Did you seek the permission of DJO Global to
6 take on this engagement?

7 A No.

8 Q Why not?

9 A I didn't think I needed their permission.

10 Q Did you check to see if DJO Global or any
11 other Blackstone portfolio company had ever used the
12 phrases exit out of or transition out of in any public
13 statement?

14 A No.

15 Q So you don't know either way?

16 A I don't know either way.

17 Q Do you know if La Jolla Group or any of its
18 brands ever used the phrases exit out of or transition
19 out of in any of its public statements?

20 A I don't specifically recall, but that's
21 terminology that we would use, yes.

22 Q But you don't know whether it ever was used?

23 A I don't know.

24 Q Same question for O'Neill.

25 A Can you restate the question?

1 **Q Do you know if whether O'Neill ever used the**
2 **phrase exit out of or transition out of in any public**
3 **statement?**

4 A I don't recall in any public statement.

5 **Q Same question for Rip Curl or No Fear.**

6 A Again, I don't recall in any public
7 statements.

8 **Q I assume there's no reference source or any**
9 **other kind of secondary source that would contain any**
10 **list of phrases that bear a special meaning in the**
11 **action sports apparel and hard goods businesses; is that**
12 **right?**

13 A That's correct.

14 **Q There is none, or you're not aware of any?**

15 A As it relates to public record, can you
16 restate the question?

17 **Q My question is, is there a reference source or**
18 **other secondary source, or are you not aware of one?**

19 A I'm not aware of a source.

20 **Q Mr. Bost, your CV doesn't contain a list of**
21 **any speeches you've given, does it?**

22 A I don't recall. I don't think it does.

23 **Q Have you given speeches in the last 10 years?**

24 A I wouldn't classify any of the talks or
25 interviews that I gave speeches.

1 **Q Is it fair to say, your CV does not list your**
2 **talks or interviews?**

3 A That's correct, not all of them.

4 **Q Does it list any of them?**

5 A I think the specific references would be the
6 appearance on Undercover Boss in 2013, various clips
7 that I gave to the Wall Street Journal, but there were
8 so many, I couldn't possibly list them all.

9 **Q Your CV doesn't have any written publications**
10 **that you authored or wrote; is that right?**

11 A That's correct.

12 **Q Have you published any writings in the last 10**
13 **years?**

14 A No.

15 **Q Is Belvedere Capital evaluating whether to**
16 **invest in any companies in which Mr. Schoonover plays**
17 **any role?**

18 A No.

19 **Q Is Belvedere Capital evaluating whether to**
20 **invest in any competitors of Burton?**

21 A No.

22 **Q Is Belvedere Capital evaluating whether to**
23 **invest in any businesses that are in the action sports**
24 **apparel field?**

25 A Yes.

1 Q You don't consider those potential investments
2 to be competitors of Burton, however?

3 A Not at this time, no.

4 Q Do you consider Burton to be a participant in
5 the action sports apparel field?

6 A Yes.

7 Q Fair to say, though, that Belvedere Capital is
8 evaluating whether to invest in businesses that one day
9 could compete with Burton?

10 A I think that's fair to say.

11 Q And they could compete with Burton one day, if
12 they attain a certain status; is that right?

13 A Yeah. I think that's an accurate way to state
14 it.

15 Q In other words, if those start-up businesses
16 grew to a certain extent and attained a certain size
17 with Belvedere Capital's backing, they could become
18 competitive with Burton, right?

19 A Yeah. I think that's fair to say.

20 Q You don't believe that represents a conflict
21 of interest on your part to offer opinions in this case
22 that are adverse to Burton?

23 A No.

24 Q Why not?

25 A Because I believe the current projects that

1 I'm working on are completely unrelated to Burton.

2 Q How can you say they're unrelated if you're
3 hoping to grow them to a point where they might be
4 competitive with Burton?

5 A Pure speculation.

6 Q What is pure speculation?

7 A I'm purely speculating that anything I do in
8 the future could or could not compete with Burton.
9 That's a pretty wide statement.

10 Q You don't know, in other words, sitting here
11 today, whether it might present a conflict of interest
12 in the future for you to offer opinions adverse to
13 Burton?

14 A That's correct.

15 MR. O'BRIEN: All right, Mr. Bost, thanks very much
16 for your participation and responses today. I don't
17 have any further questions at the moment. So I'll pass
18 you over to Mr. Schoonover.

19 THE WITNESS: Okay, thanks.

20 MR. SCHOONOVER: Yes, Evan, I can probably redirect
21 in just a few minutes here. I'll try to speak clearly
22 so that Nicole can type.

23

24 ///

25 ///

EXAMINATION

BY MR. SCHOONOVER:

Q Mr. Bost, you said Joshua Schoonover authored your declaration referred to today as Registrant's Exhibit 1?

A Yes.

Q Did you and Joshua Schoonover discuss the declaration of Exhibit 1?

A Yes.

Q Did you lend your opinions during these discussions?

A Yes.

Q Does the declaration of Exhibit 1 reflect your opinions?

A Yes.

Q Did you adopt the declaration as your own and sign it?

A Yes.

Q Is the document, Exhibit 1, in fact, your declaration testimony?

A Yes.

Q What does your declaration testimony concern?

A It concerns exiting out of or transitioning out of the Forum brand.

Q Thank you. Do others in the industry of

1 **action sports apparel use the terms exit out of and**
2 **transition out of in connection with brands?**

3 A Yes.

4 Q **For clarity, what does it mean to exit out of**
5 **a brand?**

6 A It means to direct all financial resources
7 away from any activity related to that brand.

8 Q **What does it mean to transition out of a**
9 **brand?**

10 A It means to direct all resources to other
11 brands and cease the commercialization process.

12 Q **Is your testimony as an expert required to**
13 **make sense of what it means to exit out of or transition**
14 **out of a brand?**

15 A No.

16 MR. O'BRIEN: I'll object to the form as calling
17 for a legal conclusion.

18 MR. SCHOONOVER: Let me restate.

19 BY MR. SCHOONOVER:

20 Q **Do you believe others appreciate what it means**
21 **to exit out of or transition out of a brand?**

22 MR. O'BRIEN: Objection to form.

23 MR. SCHOONOVER: I'll strike.

24 BY MR. SCHOONOVER:

25 Q **You mentioned Joshua Schoonover was your**

1 attorney for a patent application sometime in 2018; is
2 that correct?

3 A Yes.

4 Q Was Joshua Schoonover your attorney when you
5 were approached to provide an expert opinion in this
6 matter?

7 A No.

8 Q Was Joshua Schoonover your attorney when you
9 signed the declaration referred to as Registrant's
10 Exhibit 1?

11 A No.

12 Q Is Joshua Schoonover your attorney now?

13 A No.

14 Q Was Joshua Schoonover ever your attorney
15 during your involvement in this matter as an expert?

16 A No.

17 MR. SCHOONOVER: I have no further questions.

18 FURTHER EXAMINATION

19 BY MR. O'BRIEN:

20 Q All right, Mr. Bost, when did the
21 attorney-client relationship between you and
22 Mr. Schoonover end?

23 A Sometime around the end of 2018 or beginning
24 of January 2019.

25 Q When did you last render payment to

1 Mr. Schoonover for his legal services to you?

2 A I think it was November 2018.

3 Q Did Mr. Schoonover file a patent application
4 for you?

5 A Yes.

6 Q When?

7 A I don't recall the exact date.

8 Q When approximately?

9 A I don't recall.

10 Q You don't recall the year?

11 A November 2018.

12 Q Was a patent application filed?

13 A Yes.

14 Q Was it rejected?

15 A No.

16 Q What happened to it?

17 A I don't know.

18 Q Who owned an interest in the IP for which you
19 were applying for patent protection?

20 A It would have been myself and potentially one
21 of my LLCs, and I'm not sure which one.

22 Q Did Mr. Schoonover own any interest?

23 A No.

24 Q Was Mr. Schoonover paid in U.S. Currency?

25 A Yes.

1 Q Paid in full?

2 A Yes.

3 Q You're not offering your testimony in this
4 proceeding as compensation to Mr. Schoonover for his
5 legal services?

6 A No.

7 Q You're just doing it as a favor?

8 A Yes.

9 Q Do you socialize with Mr. Schoonover?

10 A We've texted. So I guess the answer to that
11 is yes.

12 Q In what capacity?

13 A How was the surf.

14 Q How would you socialize, I should say?

15 A We talk a lot about surfing. Some of his
16 interests include products that are, you know, in the
17 surf industry. We've talked a lot about the surf
18 industry and surfing.

19 Q Anything besides talking?

20 A I mean, gone to lunch. That's it.

21 Q Do you have any plans to hire Mr. Schoonover
22 to perform legal work?

23 A No.

24 Q Can you say with certainty that you won't?

25 A Yes.

1 MR. O'BRIEN: All right, that's all I have on
2 re-redirect.

3 MR. SCHOONOVER: I guess we're done. Thanks, Evan.

4 MR. O'BRIEN: Nothing further, Josh?

5 MR. SCHOONOVER: Nothing further.

6 MR. O'BRIEN: Mr. Bost, thank you very much for
7 participating today.

8 (Whereupon, at 12:39 p.m., the examination was
9 concluded.)
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1 STATE OF CALIFORNIA)

ss

2 COUNTY OF SAN DIEGO)

3 I, NICOLE GALVIN, Certified Shorthand Reporter
4 in and for the State of California, Certificate No.
5 13826, do hereby certify:

6 That the witness in the foregoing examination
7 was by me first duly sworn to testify the truth, the
8 whole truth, and nothing but the truth in the foregoing
9 cause; that the examination was taken before me at the
10 time and place herein named; that said examination was
11 reported by me in shorthand and transcribed, through
12 computer-aided transcription, under my direction; and
13 that the foregoing transcript is a true record of the
14 testimony elicited at proceedings had at said
15 examination.

16 I do further certify that I am a disinterested
17 person and am in no way interested in the outcome of
18 this action or connected with or related to any of the
19 parties in this action or to their respective counsel.

20 In witness whereof, I have hereunto set my
21 hand this 20th day of November, 2020.

22 Read and Sign was not requested.

23 *Nicole T. Galvin*

24 NICOLE GALVIN, CSR NO. 13826

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Cancellation No 92067794 (Parent)

Cancellation No. 92069499

Joshua S. Schoonover

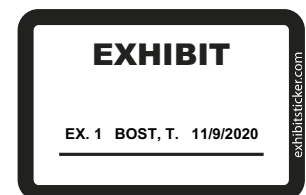
v.

The Burton Corporation

DECLARATION OF TOBY F. BOST

I, Toby F. Bost, hereby declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I have served a career as an executive in the action sports apparel and hardgoods business, including executive roles at La Jolla Group, O'Neill, Rip Curl, and No Fear. A true and correct copy of my resume is attached herewith as "Exhibit A".
2. I founded the La Jolla Group's multi branded portfolio as CEO/Chairman (brands included: O'Neill, Lost, Rusty, Metal Mulisha, FMF, Alien Workshop, Habitat, Reflex, Berrics, Target Swim, LJG Retail, LJG Ecommerce).
3. For purposes herein, the term "action sports" is synonymous with "extreme sports", and means a sport that is physically hazardous, such as: surfing, skateboarding, snowboarding, and motocross.
4. I have appeared on the television series: Undercover Boss, CBS Feb 2013; and participated in multiple features in the Wall Street Journal, LA Times, and other national media platforms.
5. I am an expert in the action sports apparel and hard goods business.
6. During the years 1999-2013, my office was physically located in Irvine, CA, the same city where Forum Snowboards was headquartered prior to the "Burton Restructuring" as described in the Burton Press Release titled "Burton Realigns its Family of Brands for Long-Term Success" (a



true and correct copy is attached as “Exhibit B”). Being in the same city, and in the same business (action sports apparel), the Burton Press Release was a significant and meaningful event in the action sports industry that I recall well.

7. I have refreshed my recollection with a review of the Burton Press Release (Exhibit B).

8. I have further refreshed my recollection with a review of the Transworld Business interview with Jake Burton, published by the action sports network with the title: “Jake Burton On Overhauling Corporate Structure, Closing The Program Brands”, a copy of the interview is publicly available at: <https://www.adventuresportsnetwork.com/transworld-business/burton-overhauls-corporate-structure-pulling-out-of-the-program/> (a true and correct copy attached as “Exhibit C”).

9. I have been asked by Petitioner, Joshua S. Schoonover, to clarify the meaning of the phrase “transition out of”, “transitioning out of”, “exit out of” or “exiting out of” as it is used in the action sports apparel and hard goods business. I have also been asked to lend my opinion as to the intent of The Burton Corporation related to the act of exiting out of the Program Brands, namely the Forum brand.

10. First, the phrases “transition out of”, “transitioning out of”, “exit out of” or “exiting out of”, with respect to a brand, is a phrase that is often used in the action sports apparel and hardgoods business, and to “transition out” or “exit out” means, with respect to the brand, to stop making, selling and/or offering for sale, goods which bear the mark associated with the respective brand. With respect to a business, it would mean to cease activities of a business as a whole. In the instant matter, the phrase “transition out of” or “exit out of” is used in connection with The Program Brands, including Forum.

11. Therefore, it is my opinion that when The Burton Corporation made a public statement

(Exhibits B&C, respectively) manifesting intent to “exit out of the Program Brands”, namely Forum, it was received by myself, and likely most or all in the field, that Burton was going to stop manufacturing and selling goods bearing these marks, specifically the Forum mark.

12. Jake Burton expressly confirmed the intent to “put [Forum] to bed” in the Transworld Business interview (Exhibit C) but suggested The Burton Corporation would seek to maintain the trademarks. It appears from the documentary evidence, and is certainly my opinion, that The Burton Corporation’s intent was to stop making and selling goods bearing the Forum mark, among other marks identified, but to preserve the trademark registrations in absence of actual commercial use.

13. I have not been retained, paid or compensated in exchange for providing this declaration and opinion testimony. I am volunteering these statements and opinions in an effort to assist the Trademark Trial and Appeal Board (TTAB) with clarification of the meaning of a term of art in a specific field, which I understand to be disputed by the parties, and to lend my opinion concerning intent of The Burton Corporation as it relates to subject matter manifested in published releases and interviews, which intent is speculated but may be best appreciated under the circumstances by those with relevant experience in the particular field, and therefore my opinion may be helpful to the TTAB to redress a disputed issue, namely, intent which goes to the issue of abandonment. I have no interest in the outcome of this matter.

Dated: 7/24/2019

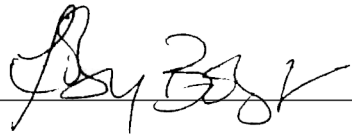
Signed: 
Toby F. Bost

EXHIBIT A

Contact

www.linkedin.com/in/tobybost
(LinkedIn)

Top Skills

Making a career out of BRAND
BUILDING

Apparel

Brand Development

Toby Bost

President and CEO//Senior Executive//Board Member
Greater San Diego Area

Summary

+ Appeared on Undercover Boss, CBS Feb2013. Multiple features in Wall-street Journal, LA Times, and other national media platforms

+ 25yr seasoned veteran in Consumer Products including Apparel, Footwear, Accessories, Class I&II Medical Devices

+ E2E understanding of business operations, creative, and marketing

+ Experienced Consumer Products Exec & CMO for Global Medical Device leader with P&L responsibilities

+ Seasoned veteran in the boardroom and in interacting with directors

+ Results-driven professional with 20 years of experience in brand building, interactive marketing, product franchising, running operations, manufacturing and delivering on revenue generation

+ Founded the La Jolla Group's multi branded portfolio as CEO/Chairman (O'Neill, Lost, Rusty, Metal Mulisha, FMF, Alien Workshop, Habitat, Reflex, Berrics, Target Swim, LJG Retail, LJG Ecommerce)

+ Excellent long term relationships with retailers globally

+ Passion for creative processes & product innovation. Visioned consistent top selling product franchises for all consumer segments across the DJO & LJG portfolios. Directly managed creative teams from design inception to completion. Developed the industry leading and award winning Superfreak™ board short line for O'Neill

+ Skill set includes ability to identify opportunity, define the marketplace, build brands, drive customer transactions,

management of creative design, 21st century marketing, recruiting, ability to lead direct to consumer (ecommerce & brick and mortar) sales, and manufacturing of market leading products

+ Responsibilities: day to day management, identify opportunity, lead acquisition transactions, conduct license negotiations, partner relationships, product creation, press, product feedback, operations, hiring and follow-on investments

+ Deep and broad relationships to attract investors and brands

+ Successful track record working with complex organizational layers of executives and direct reports.

Experience

DJO Global

President Consumer Business/Chief Marketing Officer

November 2013 - Present

Greater San Diego Area

A Blackstone Portfolio Company

La Jolla Group LLC

CEO

May 2006 - November 2013 (7 years 7 months)

Irvine, CA

O'Neill

CEO, COO, EVP

May 1999 - November 2013 (14 years 7 months)

Irvine, CA

Rip Curl

VP Manufacturing

May 1998 - May 1999 (1 year 1 month)

No Fear

VP Manufacturing

January 1996 - May 1998 (2 years 5 months)

Education

University of San Diego

Bachelor of Business Administration - BBA · (1989 - 1993)

EXHIBIT B

Burton Realigns its Family of Brands for Long-Term Success

BURLINGTON, VT (October 23, 2012) Burton Snowboards today announced that its senior management team has elected to alter the structure of Burton owned brands to better position the company, its retail partners and stakeholders for the future. The current family of brands includes Analog, Gravis, RED, anon, Foursquare, Forum, Special Blend and Channel Islands. During a company-wide meeting today at its headquarters in Vermont, Burton Founder and CEO Jake Burton explained the new structure and how it will allow Burton to focus on what it does best: make and support products that set the bar for snowboarding development and further progress the sport and lifestyle.

Specifically, Burton announced the following changes to its structure and subsidiaries. Over the next year, Analog will return to its roots of being a pure snowboarding brand based at its original home in Burlington, Vermont. Analog has a deep heritage in snowboarding from the day when Greg Dacyshyn (Burton Chief Creative Officer) and the late Jeffy Anderson (Team Rider) gave birth to the brand in Burlington, and as such, will revert back to being a winter-only brand. Burton's Gravis brand will ultimately move its headquarters to Tokyo, Japan and moving forward will be solely distributed in Asian markets selling lifestyle shoes and bags. Gravis was established in 1998 as the company's first independent lifestyle brand, and since then, Asia has been by far its most successful region. As a result, Gravis will now focus purely on this market and opportunity. Further, in a move that Burton has been planning for several years, the company will also start developing protective headwear under the anon brand name. Burton will continue to offer its RED helmets on a limited basis, but the bulk of helmet and optics product lines will be combined under the anon brand, which has become synonymous with quality riding accessories.

Also part of today's restructure, Burton announced it will transition out of its Program brands (Foursquare, Forum and Special Blend), which were purchased in 2004 with the intent to keep snowboard companies in the hands of snowboarders. Burton has supported these brands for eight years and will continue to support them over the next year through warranty service, dealer support, marketing and inventory. The company will exit out of The Program brands in winter 2014, in order to better focus on and invest in Burton.

Finally, Channel Islands, which was acquired by Burton in 2006, will be unaffected by this brand realignment and will continue to design, develop and manufacture best-in-class surf hardgoods products in Carpinteria, California.

In addressing all of these changes, Jake Burton had this to say: "Burton has experienced several years of income growth since the recession and paid out bonuses to employees over the last two years," said Jake. "That said, the economy has a voice of its own that we all have to listen to, and the message is clear: do what you do best and focus purely on it. In our case, that means to narrow our focus to the sport and lifestyle that got us here – snowboarding. We will continue to support Channel Islands in its endeavor to make the best surfboards in the world and Gravis in its new home in Japan, but when you walk through the front door here in Burlington, Vermont, it will be all snowboarding and snowboarding lifestyle all the time – driven by the Burton, Analog and anon brands."

Jake went on to share that one of the key factors that led senior management to these decisions includes the success of Burton's entry into the apparel and bag/pack business on a year-round basis, which has grown significantly in all seasons. The message Burton has taken from the marketplace is that for long-term success, this is the direction that the company should be pursuing, along with its core hardgoods and outerwear business.

Increasing the company's focus on Burton has also been demonstrated by recent significant investments in Burton's headquarters and infrastructure. These include the acquisition of the building next door to its Burlington, Vermont headquarters where the company not only built Craig's, a new 10,000-square-foot R&D and prototype facility, but also Area 13, a 6,000-square-foot Burton/anon/Analog wholesale showroom. Craig's (named after the late Craig Kelly) is known as the most advanced and sophisticated snowboard prototype facility in the world where ideas are conceived, built and on-snow in less than 24 hours. Area 13 is Burton's marquee showroom where retailers from all over the world can come to Vermont to see future product lines. Like today's announcement, both of these examples demonstrate the company's commitment to the long-term growth, progression and success of the Burton snowboard brands.

In closing, Jake went on to state the following: "I take full responsibility for the decisions that led to the creation (or acquisitions) of these ancillary brands, and I similarly am the individual ultimately responsible for the decision to realign and focus more purely on what made this company from the start. Clearly, the most difficult aspect of this decision and transition is the people affected. The employees and team riders associated with these brands have poured their guts into making it happen. Their level of commitment has been extraordinary, and we will do everything we can to help support them through this transition. There is never a good time for moves like this, and we could have delayed the announcement, but it isn't our style to perpetuate a myth. Clearly this transition will pose challenges along the way, but in the long run, everyone will see the results of our commitment to our core business."

About Burton

In 1977, Jake Burton Carpenter founded Burton Snowboards out of his Vermont barn and has dedicated his life to snowboarding ever since. Burton has played a pivotal role in growing snowboarding from a backyard hobby to a world-class sport by creating groundbreaking products, supporting a team of top snowboarders and pushing resorts to allow snowboarding. Today, Burton designs and manufactures industry-leading products for snowboarding and the snowboard lifestyle, including snowboards, boots, bindings, outerwear and layering as well as year-round apparel, packs/bags and accessories. Privately held and owned by Jake and his wife, Burton President Donna Carpenter, Burton's headquarters are in Burlington, Vermont with offices in Austria, Japan, Australia and California. For more information, visit www.burton.com.

Follow our line at facebook.com/burtonsnowboards and twitter.com/burtonsnowboard

Media Contact:

Anne-Marie Dacyshyn
amd@burton.com
Burton Snowboards
(802) 652-3720

2012 Burton Restructure: Key Facts by Brand

ANALOG

Heritage

Following Burton's outerwear legacy, Analog was created in 1999 as a more progressive, style-conscious outerwear collection led by a handful of top pros at the time, including Trevor Andrew, Jeffy Anderson and Gigi Ruf. Since then, Analog has continued to drive many of snowboarding's outerwear style trends, and in 2003 Analog added a streetwear component to its line, followed by surf apparel, a surf team and an Analog skate platform.

Key Facts

- Burton has made the decision to ultimately transition out of Analog surf and skate apparel by next fall.
- Analog surf and skate apparel will be shipped through Spring/Summer '13, and will be marketed and supported.
- After the spring season, Burton will continue to design, develop and distribute Analog as a winter-only brand, operating out of Burton's headquarters in Burlington, Vermont, with points of distribution around the world.
- The new Analog will only design and distribute Analog outerwear and tech apparel, called "ATF", along with basics.

Team Update

The Analog snow team, made up of Danny Davis, Mikkel Bang and Zak Hale will continue on as Analog riders. Regarding the Analog surf and skate teams, we will be working with each team rider individually on an exit plan to transition them out of the brand.

GRAVIS

Heritage

Gravis was started by Burton in 1998, as the company's first independent lifestyle brand. From the start, Gravis was focused on creating casual footwear, bags and softgoods built on an action sports lifestyle platform. Today the brand is still rooted in footwear, with the addition of a skate shoe collection and team, launched in August, 2008.

Key Facts

- Gravis will ultimately become an Asian-only brand, which will result in the wind down of the brand in North America, Southern Hemisphere and Europe.
- With this decision, Gravis' headquarters will be re-located to Tokyo and run out of Japan, in order to best serve the Asian market where Gravis is the most established and where it has its most viable business.
- Gravis product will be shipped through Spring/Summer '13 in all regions. Gravis will become an Asian-only brand in the fall of 2013.

Team Update

With this move to be a primarily lifestyle brand, the Gravis team will be restructured to accommodate the lifestyle market in Asia.

RED & ANON

Heritage

RED was started by Burton in 1996 as its first protection brand. Since then, RED has designed, developed and manufactured helmets and protective wear for pros and consumers alike. Anon was established as Burton's eyewear brand in 2001 and focuses on goggles.

Key Facts

- Burton will be developing and manufacturing protective headwear (helmets) under the anon name. Anon has become synonymous with quality riding accessories, and it is a natural extension to add helmets to its mix.
- RED helmets will continue to be sold on a limited basis. Anon helmets will be launched for Winter 2014 for all channels.

Team Update

We will be working with each RED and anon team rider on an individual basis regarding this announcement.

THE PROGRAM (Foursquare, Forum, Special Blend)

Heritage

Burton purchased The Program brands in 2004 from Four Star Distribution. At that time, Burton felt an obligation (and an opportunity) to slow the trend of ski companies buying up snowboard brands. Consequently, when these companies went up for sale, Burton purchased them and they became 'The Program' brands for Burton.

Key Facts

- The intent from the beginning was to keep snowboard companies in the hands of snowboarders and keep these brands thriving. As the world's leading snowboard company, Burton felt there would never be a better home for these three brands.
- But even under Burton's wing, after 8 years, the businesses have failed to be viable. Consequently, Burton has realized it's time to exit out of them, in order to better focus and invest in the Burton brand.
- Therefore, Burton will be transitioning out of Foursquare, Forum and Special Blend globally after this season.
- Current winter 2013 product will be supported over the next year, via warranty, dealer, marketing and inventory support.

Team Update

We will be working with each team rider on an individual exit plan to transition them out of these brands.

CHANNEL ISLANDS

Heritage

Burton acquired Channel Islands Surfboards in June, 2006 after the founders of each company, Al Merrick and Jake Burton, forged an agreement over the fact they shared a similar mindset and passion for their respective sports. With their shared vision for putting the sports in the hands of the team athletes and shared philosophies on hardgoods product development, it was a very natural partnership.

Key Facts

- Channel Islands is not affected by the announcements today. Burton will continue to support the CI operation in Carpinteria, California, as usual.
- Burton is very happy with and committed to our relationship with Channel Islands.

Team Update

There will be no team riders affected, as there are no changes to the Channel Islands operating or marketing structure.

BURTON SNOWBOARDS

Burton will continue to do what it does best: make and support products that set the bar for snowboarding development. The most graphic change will be increased resources and investments made available to Burton to further progress our sport and lifestyle. Outside of our renewed focus, it will be business as usual.

###

EXHIBIT C

Jake Burton On Overhauling Corporate Structure, Closing The Program Brands

lewism



Burton Founder and CEO Jake Burton. Photo: Curtes

In a company-wide meeting this morning, [Jake Burton](#) announced a sweeping realignment of the company's brands and corporate structure including transitioning out of The Program brands, Foursquare; Forum; and Special Blend after this winter, moving Gravis to Tokyo and distributing it solely in Asia, transitioning Analog out of skate and surf, launching anon helmets, and scaling back RED to limited availability.

We caught up with [Burton](#) after the meeting to learn more about the impacts and goals of this difficult decision:

Sounds like it was a difficult morning out in Burlington today?

Yeah, it was a little while coming--pretty tough. Especially for the people involved, but something we had to go through.

What's the mood over there today following this morning's meeting?

The affects here in Burlington were negligible in the context of people or non-existent really.

The impacts were more in the California offices?

Yeah, it's obviously more of a blow to our California crew. It's the hardest part of the whole thing obviously. We all feel that we've sort of let each other down, but everybody gave 100 percent in investment and commitment and passion towards those brands, but in the long run the writing was on the wall. I think everybody pretty much accepts that and has come to grips with it.

Will you guys be closing the Costa Mesa offices?

There's quite a period of time of transition so that won't be happening immediately, but over time, probably. We have two buildings in Costa Mesa, Burton is out of a building as well. So we'll probably, over a period of six months or so, squeeze everything into there.

We're still shipping Analog spring/summer and we want to support it in the context of marketing and inventory and everything else that goes along with having a brand in the marketplace?

Can you share how many people were affected or a percentage?

We are privately held so it's not like we have to file specific information, but I think it's a bit vague in the context. We could have put on sort of an act and pretended like the brands were still in business and had trade show booths.

Smoke and mirrors.

Exactly. We didn't go that route so consequently we wanted to be honest and forth coming and not bullshit people. Our decision was to announce it pretty quickly and consequently a lot of people are sticking around to facilitate the transition. They're not sticking around forever. Some people are pretty much done, but that's a minority.

As you know, this is the beginning of a long-term transition strategy. As such, specifics on HR data will not be disclosed. What I can share is that where appropriate and where opportunities exist, we will be absorbing staff into the Burton infrastructure full-time, and/or keeping them on for transitional roles and support.

There's been a lot of talk and speculation around the industry about how you guys were impacted by last winter and the economy in general.

That definitely precipitated it in some form, but [financially we've had a couple good years](#). This year's looking fine, so this was more of a function of, and I say this in all honesty, looking forward at the long-term viability of those brands. Maybe a killer winter last year would have made us less focused on looking at our longer term deal, but I don't think it was something that was made in the context of just a tough winter.

You think that would have just prolonged the decision?

Yeah, it would have probably just made us a little bit less inclined to look at the long-term viability of everything we're involved in.

In saying this has been a long time coming, give me a background of the discussions around these changes and where you're looking at taking things for Burton?

It's a combination of the success that we've had with the Burton brand and also in new categories on a year-round basis. The apparel thing is going very well and our bag and pack business continues to surprise us with how real it is. We came to the realization that those are the areas where we should be investing and it's where the brightest future is for us and our retailers.

With focusing more of your efforts on the Burton brand, where do you see reinvesting on that side?

We can focus more money on the marketing side of our year-round business--the apparel, bags, and pack stuff. We can invest in product development and R&D facilities much like we built Craig's for the board thing--we want to add in to [Craig's](#) the capability to make prototype bags--same day like we do with boards, and take things in that direction. Having those other brands that were not making money--it wasn't like I was all stressed solely about having to make money--but in the longer term it was money that could have been spent in other areas.

The philosophy of focusing on what you do well and pouring your energy into that is a serious reality in today's economy.

Yeah, exactly. We have a board of directors--they're pretty financially oriented and capable people. They're more advisors because we're privately held and can do what we want, but the message from them was that this economy is very much rewarding those who focus on their core business. To hear that repeatedly, I guess it finally sunk in.

Take a look back at the Burton timeline:

As far as The Program brands, the release says your transitioning out of them. What does that mean? Are you planning on selling them or are you putting those to bed?

We'll probably, to use your words, put them to bed. I don't see us selling them. I think we will retain the trademarks should anything ever develop in the future, but it's part and parcel of the philosophy of looking at what we do best. We have looked at opportunities to target those brands towards specific opportunities that might exist in the marketplace at different levels of distribution or price points and it seems like the message we get from people is "we want Burton." So we've got to be responsive to that.

Do you see launching a different line under Burton to better target The Program customer?

For sure. I think that the Burton brand is pretty encompassing, but this is an opportunity for us to expand our core business as we know it and seize on opportunities that exist.

On to the Gravis front, how much of the market share of Gravis has been in the Asian market? I'm guessing that's why you're shifting it there.

I don't have those numbers, but it's probably been close to, or more than, half. Even in the early years when Gravis was wildly successful, so much of the business done in North America and Europe was being diverted to Japan. Japan has always had this very genuine affinity towards the brand and I think our people over there were very anxious to give it a shot and felt they could succeed. I think in many ways it will be cool to have the brand rooted where it is virtually adored.

So it will be headquartered out of the Burton Japan office?

Yes, for sure.

With funneling more resources into the Burton brand, do you foresee launching Burton footwear with that product knowledge from Gravis?

It's not on the table. We really want to focus on our snowboard boots and products.

On the anon side, it definitely makes sense to roll helmets up with that and move away from RED.

That's something we've been talking about and it had been in process. It almost felt a little bit awkward lumping it in with this other news about other decisions that were made more recently, but we felt it was logical since this was going to be happening to announce them all together at the same time.

The anon thing is interesting. It's different logic that pushed that decision, but when you look at it in and of itself it's sort of the same philosophy.

Will the design direction be similar to RED or will it be a big departure?

I think it's an opportunity for different identity on the helmets in the context of logo-ing, and we're putting more resources into it. There were also a lot of efficiencies right there just with the expenses of running two brands. The efficiencies of making it one brand gives us more money to invest in R&D, design, marketing, team, and so forth.

What does that mean as far as RED having limited availability going forward?

We want to support the riders--there are some team riders on RED...

So they'll stay on?

Yeah.

Will product still be available at retail?

I don't know if we've decided the exact scope, but for sure in our retail. Beyond that, I'm not sure. It probably depends a lot on what the demand is.

With focusing most of your efforts back on snowboarding, why did you guys decide to leave Channel Islands unaffected?

Channel Islands is very independent. It's not any kind of a distraction for us and it's something we're very proud of and it's viable in the long term.

And performing well financially?

It's not the size of Burton and I wouldn't say it's making money hand over fist, but to a certain extent it's a labor of love. It's such a good thing and I feel a commitment to AI [Merrick] and a commitment to the people there to perpetuate it. It's very independent and doesn't have the end result of taking our eye off the ball in any way.

What would be the take away message for your retailers? What does this mean for the relationship and for your brand?

Just like it's tough for myself, I think it will be tough to a lot of retailers who have shown commitments to these brands. I don't want to minimize that. I get it and I understand it and I feel the same way, but I am confident that this is the right move in the long term for us and our retailers. I don't think that there is any conflict of interest there. I think we are very aligned and I think they will see that and see our increased commitment to our core business and I think we will all benefit in the long run. Hopefully they have confidence in our ability to make the right decisions and I think by and large we've done that in the long term. We've been in this business for over 35 years and a lot of our retailers have been in it damn near that long themselves. It's a tough period of time and I don't want to minimize the severity of what's going on, but I think that it is a decision that has been agonized over and debated and very thought out and I think that they need to trust us on that and those that do I think will be rewarded in the long run.

Anything else you'd like to add?

I just wish the best for the people affected.

Follow the jump for this morning's press release and a run down of the affects on Analog, Gravis, anon, RED, Channel Islands, The Program, and Burton...



Here's the release:

BURLINGTON, VT (October 23, 2012) Burton Snowboards today announced that its senior management team has elected to alter the structure of Burton owned brands to better position the company, its retail partners and stakeholders for the future. The current family of brands includes Analog, Gravis, RED, anon, Foursquare, Forum, Special Blend and Channel Islands. During a company-wide meeting today at its headquarters in Vermont, Burton Founder and CEO Jake Burton explained the new structure and how it will allow Burton to focus on what it does best: make and support products that set the bar for snowboarding development and further progress the sport and lifestyle.

Specifically, Burton announced the following changes to its structure and subsidiaries. Over the next year, Analog will return to its roots of being a pure snowboarding brand based at its original home in Burlington, Vermont. Analog has a deep heritage in snowboarding from the day when Greg Dacyshyn (Burton Chief Creative Officer) and the late Jeffy Anderson (Team Rider) gave birth to the brand in Burlington, and as such, will revert back to being a winter-only brand. Burton's Gravis brand will ultimately move its headquarters to Tokyo, Japan and moving forward will be solely distributed in Asian markets selling lifestyle shoes and bags. Gravis was established in 1998 as the company's first independent lifestyle brand, and since then, Asia has been by far its most successful region. As a result, Gravis will now focus purely on this market and opportunity. Further, in a move that Burton has been planning for several years, the company will also start developing protective headwear under the anon brand name. Burton will continue to offer its RED helmets on a limited basis, but the bulk of helmet and optics product lines will be combined under the anon brand, which has become synonymous with quality riding accessories.

Also part of today's restructure, Burton announced it will transition out of its Program brands (Foursquare, Forum and Special Blend), which were purchased in 2004 with the intent to keep snowboard companies in the hands of snowboarders. Burton has supported these brands for eight years and will continue to support them over the next year through warranty service, dealer support, marketing and inventory. The company will exit out of The Program brands in winter 2014, in

order to better focus on and invest in Burton.

Finally, Channel Islands, which was acquired by Burton in 2006, will be unaffected by this brand realignment and will continue to design, develop and manufacture best-in-class surf hardgoods products in Carpinteria, California.

In addressing all of these changes, Jake Burton had this to say: "Burton has experienced several years of income growth since the recession and paid out bonuses to employees over the last two years," said Jake. "That said, the economy has a voice of its own that we all have to listen to, and the message is clear: do what you do best and focus purely on it. In our case, that means to narrow our focus to the sport and lifestyle that got us here - snowboarding. We will continue to support Channel Islands in its endeavor to make the best surfboards in the world and Gravis in its new home in Japan, but when you walk through the front door here in Burlington, Vermont, it will be all snowboarding and snowboarding lifestyle all the time - driven by the Burton, Analog and anon brands.

Jake went on to share that one of the key factors that led senior management to these decisions includes the success of Burton's entry into the apparel and bag/pack business on a year-round basis, which has grown significantly in all seasons. The message Burton has taken from the marketplace is that for long-term success, this is the direction that the company should be pursuing, along with its core hardgoods and outerwear business.

Increasing the company's focus on Burton has also been demonstrated by recent significant investments in Burton's headquarters and infrastructure. These include the acquisition of the building next door to its Burlington, Vermont headquarters where the company not only built Craig's, a new 10,000-square-foot R&D and prototype facility, but also Area 13, a 6,000-square-foot Burton/anon/Analog wholesale showroom. Craig's (named after the late Craig Kelly) is known as the most advanced and sophisticated snowboard prototype facility in the world where ideas are conceived, built and on-snow in less than 24 hours. Area 13 is Burton's marquee showroom where retailers from all over the world can come to Vermont to see future product lines. Like today's announcement, both of these examples demonstrate the company's commitment to the long-term growth, progression and success of the Burton snowboard brands.

In closing, Jake went on to state the following: "I take full responsibility for the decisions that led to the creation (or acquisitions) of these ancillary brands, and I similarly am the individual ultimately responsible for the decision to realign and focus more purely on what made this company from the start. Clearly, the most difficult aspect of this decision and transition is the people affected. The employees and team riders associated with these brands have poured their guts into making it happen. Their level of commitment has been extraordinary, and we will do everything we can to help support them through this transition. There is never a good time for moves like this, and we could have delayed the announcement, but it isn't our style to perpetuate a myth. Clearly this transition will pose challenges along the way, but in the long run, everyone will see the results of our commitment to our core business."

2012 Burton Restructure: Key Facts by Brand

ANALOG

Heritage

Following Burton's outerwear legacy, Analog was created in 1999 as a more progressive, style-conscious outerwear collection led by a handful of top pros at the time, including Trevor Andrew, Jeffy Anderson and Gigi Ruf. Since then, Analog has continued to drive many of snowboarding's outerwear style trends, and in 2003 Analog added a streetwear component to its line, followed by surf apparel, a surf team and an Analog skate platform.

Key Facts

- *Burton has made the decision to ultimately transition out of Analog surf and skate apparel by next fall.*
- *Analog surf and skate apparel will be shipped through Spring/Summer '13, and will be marketed and supported.*
- *After the spring season, Burton will continue to design, develop and distribute Analog as a winter-only brand, operating out of Burton's headquarters in Burlington, Vermont, with points of distribution around the world.*
- *The new Analog will only design and distribute Analog outerwear and tech apparel, called "ATF", along with basics.*

Team Update

The Analog snow team, made up of Danny Davis, Mikkel Bang and Zak Hale will continue on as Analog riders. Regarding the Analog surf and skate teams, we will be working with each team rider individually on an exit plan to transition them out of the brand.

GRAVIS

Heritage

Gravis was started by Burton in 1998, as the company's first independent lifestyle brand. From the start, Gravis was focused on creating casual footwear, bags and softgoods built on an action sports lifestyle platform. Today the brand is still rooted in footwear, with the addition of a skate shoe collection and team, launched in August, 2008.

Key Facts

- *Gravis will ultimately become an Asian-only brand, which will result in the wind down of the brand in North America, Southern Hemisphere and Europe.*
- *With this decision, Gravis' headquarters will be re-located to Tokyo and run out of Japan, in order to best serve the Asian market where Gravis is the most established and where it has its most viable business.*
- *Gravis product will be shipped through Spring/Summer '13 in all regions. Gravis will become an Asian-only brand in the fall of 2013.*

Team Update

With this move to be a primarily lifestyle brand, the Gravis team will be restructured to accommodate the lifestyle market in Asia.

RED & ANON

Heritage

RED was started by Burton in 1996 as its first protection brand. Since then, RED has designed, developed and manufactured helmets and protective wear for pros and consumers alike. Anon was established as Burton's eyewear brand in 2001 and focuses on goggles.

Key Facts

- *Burton will be developing and manufacturing protective headwear (helmets) under the anon name. Anon has become synonymous with quality riding accessories, and it is a natural extension to add helmets to its mix.*
- *RED helmets will continue to be sold on a limited basis. Anon helmets will be launched for Winter 2014 for all channels.*

Team Update

We will be working with each RED and anon team rider on an individual basis regarding this announcement.

THE PROGRAM (Foursquare, Forum, Special Blend)

Heritage

Burton purchased The Program brands in 2004 from Four Star Distribution. At that time, Burton felt an obligation (and an opportunity) to slow the trend of ski companies buying up snowboard brands. Consequently, when these companies went up for sale, Burton purchased them and they became 'The Program' brands for Burton.

Key Facts

- *The intent from the beginning was to keep snowboard companies in the hands of snowboarders and keep these brands thriving. As the world's leading snowboard company, Burton felt there would never be a better home for these three brands.*
- *But even under Burton's wing, after 8 years, the businesses have failed to be viable. Consequently, Burton has realized it's time to exit out of them, in order to better focus and invest in the Burton brand.*
- *Therefore, Burton will be transitioning out of Foursquare, Forum and Special Blend globally after this season.*
- *Current winter 2013 product will be supported over the next year, via warranty, dealer, marketing and inventory support.*

Team Update

We will be working with each team rider on an individual exit plan to transition them out of these brands.

CHANNEL ISLANDS

Heritage

Burton acquired Channel Islands Surfboards in June, 2006 after the founders of each company, Al Merrick and Jake Burton, forged an agreement over the fact they shared a similar mindset and passion for their respective sports. With their shared vision for putting the sports in the hands of the team athletes and shared philosophies on hardgoods product development, it was a very natural partnership.

Key Facts

- *Channel Islands is not affected by the announcements today. Burton will continue to support the CI operation in Carpinteria, California, as usual.*
- *Burton is very happy with and committed to our relationship with Channel Islands.*

Team Update

There will be no team riders affected, as there are no changes to the Channel Islands operating or marketing structure.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing document with applicable exhibits has been served on CATHLEEN E STADECKER, counsel for Respondent, by forwarding said copy on September 30, 2020, via email to: tmip@drm.com.

Signature: /Joshua S. Schoonover/

Date: September 30, 2020

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Reg. No. 2,207,535 issued on December 1, 1998, and
Reg. No. 3,598,502 issued on March 31, 2009,
each for the mark FORUM.

Joshua S. Schoonover,

Petitioner,}

v.}

The Burton Corporation,

Registrant.}

Cancellation No. 92067794 (parent)
Cancellation No. 92069499

PETITIONER JOSHUA S. SCHOONOVER’S NOTICE OF EXPERT AND EXPERT
DISCLOSURE

In accordance with Fed.R.Civ.P.26(a)(2), Petitioner Joshua S. Schoonover hereby provides the following expert disclosures:

Toby F. Bost (unretained expert)



*Attorney eyes only, please do not disseminate the Expert’s address and phone number.

Mr. Bost is expected to testify by declaration that:

- he has reviewed and is familiar with the Burton Press Release dated October 23, 2012 titled “Burton Realigns its Family of Brands for Long-Term Success”, hereinafter (the “Burton Press Release”) [*BUR_00001 - BUR_00005*];
- he has reviewed and is familiar with the ESPN interview published October 23, 2012 titled “Burton 'restructures'” (the “ESPN Interview”) [*SCH-000006 – SCH-000012*];

- the words “exit out of”, “exiting out of”, and/or “putting to bed” the “PROGRAM BRANDS” means, with respect to the FORUM mark, and to those in the relevant field of sporting goods and apparel, the act (or more accurately, the omission) amounting to ceasing manufacture of goods bearing the FORUM mark and stopping the sale of goods bearing the FORUM mark;
- it is his expert opinion that, based on and at the time of the Burton Press Release, Burton intended to stop manufacture and sale of goods bearing the FORUM mark; and
- it is his expert opinion that, as would be received and appreciated by those in the relevant field of sporting goods and apparel, based on and at the time of the ESPN Interview, Burton merely intended to preserve rights to the FORUM mark on the trademark register subsequent to exiting out of the PROGRAM BRANDS.

DATED this 19th day of April, 2019.

Respectfully submitted,
Coastal Patent Law Group, P.C.

/Joshua Schoonover/
Joshua S. Schoonover, Esq.
Petitioner, Pro Se
Reg. No. 63,294

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CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2019, I caused a true and correct copy of PETITIONER JOSHUA S. SCHOONOVER'S NOTICE OF EXPERT AND EXPERT DISCLOSURE to be served by email upon the following attorneys of record for Registrant:

Cathleen E. Stadecker: tmip@drm.com

/Joshua S. Schoonover/

Joshua S. Schoonover